

REMARKS

Reconsideration is respectfully requested. On entry of this amendment, claims 1, 19 and 40 are amended. Claims 32-35, 40-43, and 54, and 56 have been withdrawn by the Examiner as being allegedly directed to a non-elected invention. Claims 3, 4, 6, 20, 21, 31-43, and 52-56 are reiterated. Claims 2, 5, 7-18, 22-30, 44-51, 57 and 58 were previously cancelled. Claims 1, 3, 4, 6, 19-21, 31-43, and 52-56 are pending. Claims 1, 3, 4, 6, 19-21, 31, 36-39, 52, 53, and 55 are currently under examination.

The amendments herein to above-mentioned claims only clarify the subject matter of the present invention and are not made for purposes of patentability. No subject matter has been disclaimed, and the amendment of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented. No new matter has been added. Applicants expressly reserve the right to pursue identical or similar claims in other patent applications that are identical or similar to the claims amended or canceled in this response.

Without agreeing with the Examiner, but in order to expedite the prosecution of the present application, claim 1 has been amended so as to specify that the modified anti-viral peptide of the invention consists of a peptide that has been modified to contain a succinimidyl or maleimide containing group which is reactive with amino groups, hydroxyl groups, or thiol groups on blood components to form stable covalent bonds. Moreover, it also has been specified that the peptide consists of an amino acid sequence selected from the group consisting of SEQ ID NO: 1, SEQ ID NO: 3, SEQ ID NO: 4, SEQ ID NO: 5, SEQ ID NO: 117, SEQ ID NO: 118, SEQ ID NO: 119, SEQ ID NO: 534, SEQ ID NO: 535, SEQ ID NO: 536, SEQ ID NO: 537, SEQ ID NO: 538, SEQ ID NO: 539, SEQ ID NO: 540, and SEQ ID NO: 541. Claim 19 has been amended in an analogous manner. Claim 40 has been amended so as to correct a clerical error.

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Lack of Unity

Applicants acknowledge the Examiner's determination that a special technical feature is not present between the claims, as well as the withdrawal of claims 32-35, 40-43, 54, and 56.

Applicants again respectfully request reconsideration. Applicants again respectfully point out that, contrary to the Examiner's position, the two groups share a special technical feature, namely that they include a "maleimide or succinimidyl containing group." The compound claims are directed to those groups "which is reactive with amino groups, hydroxyl groups, or thiol groups on blood components to form stable covalent bonds." (Emphasis added). The modified peptides are thus designed to be bonded to a blood component. The conjugated peptides of claims 32-35 are directed to the modified peptide "covalently bonded to a blood component." (Emphasis added). This special technical feature is common to peptides capable of forming stable covalent bonds with blood components, or to peptides that already have formed stable covalent bonds with blood components. Moreover, the presence of this special technical feature is made abundantly clear throughout the Specification. The Examiner has failed to provide any reasoning as to why this claim limitation is not a special technical feature common to the claims. Merely stating that "the modified peptides may be employed in the absence of further chemical modifications... or the peptides conjugated to sundry chemical partners" is insufficient reasoning to explain away this special technical feature of the claimed invention.

35 U.S.C. § 112, First Paragraph

The Examiner has rejected claims 1, 3, 4, 6, 19-21, 31, 36-39, 52, 53 and 55 under 35 U.S.C. § 112, first paragraph. The Examiner has asserted that the claim language is "open" (i.e. "a peptide comprising") and requires that only one of the specified core sequences be present.

Without admitting or acquiescing to the Examiner's rejection, claims 1 and 19 have been amended to include "closed" language. The rejection under 35 U.S.C. § 112, First Paragraph is therefore moot.

Applicants respectfully request that this ground for rejection be withdrawn.

35 U.S.C. § 103 (a)

The Examiner has rejected claims 1, 3, 4, 6, 19-21, 31, 36-39, 52, 53 and 55 under 35 U.S.C. § 103 (a) as being unpatentable over Bolognesi et al. in view of Krantz et al. (U.S. Patent No. 6,107,489).

This ground for rejection is improper under 35 U.S.C. § 103(c). 35 U.S.C. § 103(c) states that “subject matter developed by another person which qualifies as prior art only under one or more of subsections (e), (f), and (g) ...shall not preclude patentability under [section 35 U.S.C. § 103] where the subject matter and the claimed invention were, at the time of invention was made, owned by the same person or subject to an obligation of assignment from the same person.”

First, Krantz et al. could qualify as a “prior art” reference only under 35 U.S.C. § 102(e).¹ The present application was filed September 7, 2000, and claims priority to provisional application no. 60/134,406, filed May 17, 1999, and provisional application 60/153,406, filed September 10, 1999, which fully support the presently claimed invention. Krantz et al., which issued August 22, 2000, is not a “prior art” reference under 35 U.S.C. § 102 (b) because the subject matter of Krantz et al. was not “patented or described in a printed publication ...more than one year prior” to the September 10, 1999 priority date of the instant application. Krantz et al. is not “prior art” under 35 U.S.C. §102(a) because Krantz et al. was not “known or used by others in this country, or patented or described in a printed publication in this or a foreign country” before the September 10, 1999 priority date of the present application. The only remaining section of 35 U.S.C. §102 that Krantz et al. could possibly satisfy is §102(e).

¹ Applicants note that this analysis only determines whether Krantz et al. could qualify as “prior art” under 35 U.S.C. §102(e) based on the relevant priority and issue dates. Applicants expressly do not admit or agree that Krantz et al. is “prior art” under 35 U.S.C. §102(e), or any other section of the patent code.

Second, both the Krantz et al. reference and the present application were under obligation of assignment to the same entity at the time the inventions were made.

With respect to the Krantz et al. reference, the inventors were under an obligation to assign their rights to RedCell USA and its assigns at the time the invention was made. The *Confidentiality and Proprietary Information Agreement* signed by the inventors, a copy of which is attached as Exhibit A, states in part that “[a]ll Inventions that I conceive, develop, or have developed.....shall be the sole property of the Company [RedCell USA] and its assigns, and the Company and its assigns shall be the sole owner of all patents...in connection therewith.” (Emphasis added, see Exhibit A, *Confidentiality and Proprietary Information Agreement*, page 3, section 3e).

Subsequently, RedCell USA sold and assigned its rights to all assets, including the invention of Krantz et al., to RedCell Canada (see Exhibit B, *Bill of Sale and Assignment*). RedCell Canada is thereby an assign of RedCell USA under the inventors *Confidentiality and Proprietary Information Agreement*. RedCell Canada then changed its name to Conjuchem. (See Exhibit C, *Notice of Recordation of Assignment* and *Certificat de Modification* for Provisional Application No. 60/078,230).

Because the inventors of the Krantz et al. patent were under an obligation to assign the invention to the assigns of RedCell USA at the time when the invention was made, and RedCell Canada (renamed Conjuchem) was an assign of RedCell USA, Krantz et al. were under an obligation to assign the invention to Conjuchem.

With respect to the present application, the inventors were always under an obligation to assign their rights to Conjuchem. Thus, the inventors of U.S. Patent 6,107,489 to Krantz et al., as well as the inventors of the present application, were under an obligation of assignment to Conjuchem, Inc. at the time the respective inventions were made.

Because U.S. Patent 6,107,489 to Krantz et al. is “subject matter developed by another person which qualifies as prior art only under one or more of subsections (e), (f), and (g),” and both Krantz et al. and the present application were “owned by the same person or subject to an obligation

of assignment from the same person" at the time the invention was made, the Krantz et al. reference "shall not preclude patentability under [section 35 U.S.C. § 103]." Therefore, the rejection under 35 U.S.C. § 103(a) is improper.

Applicants respectfully request that this ground for rejection be withdrawn.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 500862001520. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: Sept. 9, 2004

Respectfully submitted,

By Timothy A. Worrall
Timothy A. Worrall
Registration No.: 54,552
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105
(415) 268-7151

EXHIBIT A



CONFIDENTIAL AND PROPRIETARY INFORMATION AGREEMENT

June AK
July 20, 1994

RedCell, Inc.
35 Prospect Avenue
Sausalito, CA 94965

Ladies and Gentlemen:

The following confirms an agreement between me and RedCell, Inc., a Delaware corporation (the "Company" which term includes the Company's subsidiaries, if any), which is a material part of the consideration for my services as an employee with the Company and the compensation received by me from the Company:

1. I recognize that the Company is engaged in a continuous program of research, development and production of pharmaceutical products, present and future, including subject areas generally related to this business and that the Company possesses and will continue to possess information that has been created, discovered, developed or otherwise become known to the Company (including without limitation information created by, discovered or developed by, or made known to, me during the period of or arising out of my employment with the Company) and/or in which property rights have been assigned or otherwise conveyed to the Company, which information has commercial value in the business in which the Company is engaged. All of the aforementioned information is hereinafter called "Proprietary Information." By way of illustration, but not limitation, Proprietary Information includes biological, or pharmaceutical substances or materials, inventions, improvements, copyrightable or patentable material, know-how, formulations or compounds, techniques for the handling and commercial exploitation of the foregoing, experimental and clinical tests, procedures and results, product formulations, business strategies, forecasts, financial results or requirements, customer lists and any other confidential or proprietary information of the Company or its customers or clients of which I may learn, or to which I may be exposed during the period of my services as an employee.

2. I understand that my services as an employee creates a relationship of confidence and trust between me and the Company with respect to the Proprietary Information or any confidential information:

a. applicable to the business of the Company; or

b. applicable to the business of any client, customer, or any other with who the Company has a business relationship of the Company, which may be made known to me by the Company or by any client or customer of the Company, or learned by me during the period of my services as an employee.

3. In addition, I hereby agree as follows:

a. All Proprietary Information shall be the sole property of the Company and its assigns, and the Company and its assigns shall be the sole owner of all patents, copyrights and other rights in connection therewith. I hereby assign to the Company any rights I may have or acquire in such Proprietary Information. At all times, both during my services as an employee with the Company and after its termination, I will keep in confidence and trust all Proprietary Information, and I will not use or disclose any Proprietary Information or anything relating to it without the written consent of the Company, except as may be necessary in the ordinary course of performing my duties to the Company.

b. All documents, records, apparatus, equipment and other physical property, whether or not pertaining to Proprietary Information, furnished to me by the Company or produced by myself or others in connection with my services as an employee shall be and remain the sole property of the Company and shall be returned to it immediately as and when requested by the Company. Even if the Company does not so request, I shall return and deliver all such property upon termination of my services as an employee by me or by the Company for any reason and I will not take with me any such property or any reproduction of such property upon such termination.

c. I will promptly disclose to the Company, or any persons designated by it (subject to reasonable confidentiality requirements), all improvements, inventions, formulae, ideas, processes, techniques, experimental and clinical tests or procedures, know-how and data, whether or not patentable, made or conceived or reduced to practice or learned by me, either alone or jointly with others, during the term of my services as an employee and for one (1) year thereafter (all such improvements, inventions, formulae, ideas, processes, techniques, experimental and clinical tests or procedures, know-how and data shall be hereinafter collectively called "Inventions") which relate to the Company's business or research and development.

d. During the term of my services as an employee and for one (1) year thereafter, I will not encourage or solicit any employee of the Company to leave the Company for any reason or to devote less than all of any such employee's efforts to the affairs of the Company, provided that the foregoing shall not affect any responsibility I may have as an employee of the company

with respect to the bona fide hiring and firing of Company personnel.

e. All Inventions which I conceive, develop or have developed (in whole or in part, either alone or jointly with others) for which I (i) use or have used equipment, supplies, facilities or trade secret information of the Company, or (ii) use or have used the hours for which I am to be or was compensated by the Company, and all Inventions which (i) relate to the business of the Company or to its actual or demonstrably anticipated research and development or (ii) which result, in whole or in part, from work performed by me for the Company shall be the sole property of the Company and its assigns, and the Company and its assigns shall be the sole owner of all patents, copyrights and other rights in connection therewith. I hereby assign to the Company any rights I may have or acquire in such Inventions. I agree that any Invention required to be disclosed under paragraph (c) above within one (1) year after the term of my services as an employee shall be presumed to have been conceived during my services as an employee. I understand that I may overcome the presumption by showing that such Invention was conceived after the termination of my services as an employee. I further agree as to all such Inventions to assist the Company in every proper way (but at the Company's expense) to obtain and from time to time enforce patents, copyrights or other rights on such Inventions in any and all countries, and to that end I will execute all documents for use in applying for and obtaining such patents and copyrights thereon and enforcing same, as the Company may desire, together with any assignments thereof to the Company or persons designated by it. My obligation to assist the Company in obtaining and enforcing patents, copyrights or other rights for such Inventions in any and all countries shall continue beyond the termination of my services as an employee, but the Company shall compensate me at a reasonable rate after such termination for time actually spent by me at the Company's request on such assistance. In the event that the Company is unable for any reason whatsoever to secure my signature to any lawful and necessary document required to apply for or execute any patent, copyright or other applications with respect to such Inventions (including renewals, extensions, continuations, divisions or continuations in part thereof), I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents, as my agents and attorneys-in-fact to act for and in my behalf and instead of me, to execute and file any such application and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyrights or other rights thereon with the same legal force and effect as if executed by me.

f. So that the Company may be aware of the extent of any other demands upon my time and attention, I will disclose to the Company (such disclosure to be held in confidence by the Company) the nature and scope of any other business activity in which I am or become engaged during the term of my services as an employee. During the term of my services as an employee, and for one year thereafter, I will not engage in any business activity

which is related to the Company's business or its actual or demonstrably anticipated research and development.

g. I will not now or in the future disrupt, damage, impair or interfere with the business of the Company, whether by way of interfering with or raiding its employees, disrupting its relationships with customers, agents, vendors, distributors or representatives, or otherwise. I understand that I am not restricted from being employed by or engaged in a competing business after termination of my services as an employee by the Company.

h. As a matter of record I attach hereto a complete list of all Inventions relevant to the subject matter of my services as an employee to the Company which have been made or conceived or first reduced to practice by me alone, or jointly with others, prior to my services as an employee to the Company that I desire to remove from the operation of this Agreement, and I covenant that such list is complete. If no such list is attached to this Agreement, I represent that I have no such Inventions at the time of signing this Agreement.

i. I represent that my execution of this Agreement, my services as an employee with the Company and my performance of my proposed duties to the Company in the development of its business will not violate any obligations I may have to any former employer, including any obligations to keep confidential any proprietary or confidential information of any such employer. I have not entered into, and I will not enter into, any agreement which conflicts with or would, if performed by me, cause me to breach this Agreement.

j. This Agreement does not require assignment of an invention which an employee cannot be obligated to assign under Section 2870 of the California Labor Code (hereinafter called "Section 2870"), attached hereto as Exhibit B. However I will disclose any Inventions as required by Section 3(c) hereof regardless of whether I believe the Invention is protected by Section 2870, in order to permit the Company to engage in a review process to determine such issues as they may arise. Such disclosure shall be received in confidence by the Company.

4. Without granting any license, the Company agrees that I shall have no liability to the Company under this Agreement with respect to the disclosure and/or use of any such Proprietary Information as I can document: (i) has become publicly known without my breach of this Agreement, (ii) was known by me prior to the Company's disclosure of such information to me, (iii) has become known by me from a source other than the Company without any breach of any obligation of confidentiality subsequent to the Company's disclosure of such information to me, provided I comply with any restrictions imposed by such source.

5. I agree that this Agreement does not constitute an employment agreement and that, unless otherwise provided in a written contract signed by both the Company and me, (i) my services as an employee with the Company is "at will," and (ii) I shall have the right to resign my services as an employee, and the Company shall have the right to terminate my services as an employee, at any time and for any reason, with or without cause.

6. This Agreement shall be effective as of the first day of my services as an employee to the Company. Unless otherwise specifically stated in a written contract signed by both the Company and me, I agree that I have the right to resign and the Company has the right to terminate my services as an employee at any time, for any reason, with or without cause.

7. This Agreement shall be binding upon me, my heirs, executors, assigns, and administrators and shall inure to the benefit of the Company, its successors and assigns.

Dated: July 20, 1994

June JK

Allen Krantz
Address: 189 Coldstream Avenue
Toronto, Ontario M5N 1X7

Accepted and Agreed to:
RedCell, Inc.

By: *Bruno A. Tapolsky*
Bruno A. Tapolsky, President

July 20, 1994

June JK



EXHIBIT A

RedCell, Inc.
35 Prospect Avenue
Sausalito, CA 94965

Gentlemen:

1. The following is a complete list of all Inventions (as defined in the Company's Confidential and Proprietary Information Agreement to which this Exhibit A is attached) relevant to the subject matter of my services as an employee to RedCell, Inc. (the "Company") that have been made or conceived or first reduced to practice by me alone or jointly with others prior to my services as an employee by the Company that I desire to remove from the operation of the Company's Proprietary Information and Inventions Agreement.

No Inventions

See below

Additional sheets attached

2. I propose to bring to my services as an employee the following materials and documents of a former employer:

No materials or documents.

See below

A handwritten signature in black ink, consisting of several fluid, cursive strokes, is written over a solid horizontal line. Below the line, the word "Signature" is printed in a small, sans-serif font.



EXHIBIT B

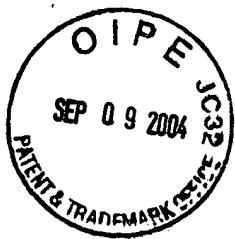
Section 2870. Application of provision providing that employee shall assign or offer to assign rights in invention to employer.

(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for these inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer.

(2) Result from any work performed by the employee for his employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.



BILL OF SALE AND ASSIGNMENT

For good and valuable consideration, receipt of which is hereby acknowledged, and pursuant to the Asset Purchase Agreement dated as of May 2, 1997 (the "Agreement"), by and between RedCell Canada Inc., a corporation governed by the laws of the province of Quebec ("RedCell Canada"), and RedCell, Inc., a Delaware corporation ("RedCell USA"), and intending to be legally bound hereby, RedCell USA does hereby unconditionally and irrevocably sell, convey, transfer, assign and deliver to RedCell Canada, all right, title and interest of RedCell USA as of the date hereof in and to the Assets (as defined in the Agreement). Nothing herein is intended to limit or supersede in any way the representations and warranties of the parties to the Agreement as set forth in the Agreement.

IN WITNESS WHEREOF, RedCell USA has caused this Bill of Sale and Assignment to be executed as of this 2nd day of May, 1997.

REDCELL, INC.

By:

Gordon Russell, President

ACCEPTED AND AGREED:

REDCELL CANADA INC.

By:

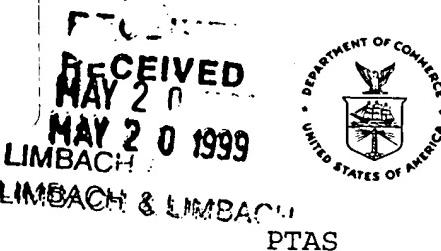

Normand Balthazard, Director

EXHIBIT C

SEP 09 2004

MAY 11, 1999

LIMBACH & LIMBACH
LIMBACH & LIMBACH
LIMBACH & LIMBACH
MICHAEL R. WARD, ESQ./PCJ
2001 FERRY BUILDING
SAN FRANCISCO, CA 94111



UNITED STATES DEPARTMENT OF COMMERCE
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ASSIGNOR:

REDCELL CANADA, INC.

DOC DATE: 04/28/1998

ASSIGNEE:

CONJUCHEM, INC.
225 PRESIDENT KENNEDY AVENUE WEST
SUITE 3950
MONTREAL, QUEBEC H2X 3Y8, CANADA

SERIAL NUMBER: 60078230
PATENT NUMBER:

FILING DATE: 03/17/1998
ISSUE DATE:

SHIRLIE SIMON, EXAMINER
ASSIGNMENT DIVISION
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02-04-1999

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To the Honorable Commissioner of Patents and Trademarks. Please record the attached original documents or copy thereof.

100957309

1. Name of conveying party(ies):

RedCell Canada, Inc.

2. Name and address of receiving party(ies):

Name: ConjuChem, Inc.

Internal Address:

Street Address: 225 President Kennedy Avenue West, Suite 3

City, State and Zip: Montreal, Quebec H2X 3Y8 CANADA

Additional name(s) of conveying party(ies) attached?

 Yes No

3. Nature of Conveyance:

- Assignment Merger
 Security Agreement Change of Name
 Other _____

Additional Name(s) & address(es) attached?

 Yes No

Execution Date: April 28, 1998

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: _____

A. Patent Application No.(s)
60/078,230

B. Patent No.(s)

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Michael R. Ward, Esq.

Internal Address: Limbach & Limbach L.L.P.
 Street Address: 2001 Ferry Building
 City, State, ZIP: San Francisco, California 94111
 Telephone: (415) 433-4150
 Facsimile: (415) 433-8716

Attorney Docket No. REDC-1300

6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41): \$ 40.00

- Enclosed
 Charge any deficiencies in the enclosed fee to
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9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Michael R. Ward, Reg. No. 38,651
Name of Person SigningMichael R. Ward
SignatureJanuary 27, 1999
Date

Total number of pages including cover sheet, attachments and document: 6

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Québec :::

CERTIFICAT DE MODIFICATION

*Loi sur les compagnies, Partie IA
(L.R.Q., chap. C-38)*

J'atteste par les présentes que la compagnie

CONJUCHEM INC.

a modifié ses statuts le **28 AVRIL 1998**, en vertu de la partie IA de la Loi sur les compagnies, tel qu'indiqué dans les statuts de modification ci-joints.

**Déposé au registre le 29 avril 1998
sous le matricule 1146750352**



Gouvernement
du Québec
L'Inspecteur
général des
institutions
financières

Inspecteur général des institutions financières



Gouvernement du Québec
L'Inspecteur général
des Institutions financières

A-110720-H94

Form 5

ARTICLES OF AMENDMENT
The Companies Act, R.S.Q., c. C-3^e
Part 1A

1 Corporate name
ConjuChem Inc.

2 Application presented in conformity with Section 123.140 and following of the Companies Act

3 The company's articles are amended as follows:

3.1 The corporate name of the Company set out in paragraph 1 of its Articles of Incorporation is hereby changed to the one above set forth in paragraph 1; and

3.2 The judicial district set out in paragraph 2 of the Articles of the Company is hereby changed to Montreal.

4 Effective date, if different from date of filing (see instructions)

N/A

5 Corporate name (or designating number), prior to amendment, if different from that mentioned in item 1
RedCell Canada Inc.

If space is insufficient, attach an appendix in two (2) copies

Signature of
authorized director

For departmental use only

CA-215 (Rev.)

Gouvernement du Québec
déposé le

28 AVR. 1998

L'Inspecteur général des
Institutions financières



A-110720-HS

Gouvernement du Québec
L'Inspecteur général
des Institutions financières

Form 2
**NOTICE OF ADDRESS
OF HEAD OFFICE**
The Companies Act, R.S.Q., c. C-
Part 1A

1 Corporate name
Conjuchem Inc.

2 Notice is hereby given that the address of the head office of the company, within the limits of the judicial district indicated in the articles, is as follows:

1801

No

de Maisonneuve Blvd, Suite 810

Street name

Montreal

Municipality

Québec

Province

H3H 1J9

Postal code

The company

(signature)

Post occupied
by signatory

PRESIDENT & CEO

For departmental use only

CA-212 (Rev. 1)

Gouvernement du Québec
déposé le

28 AVR. 1998

L'Inspecteur général des

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